

### **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed November 1, 2004. Upon entry of the amendments in this response, claims 14 - 26 and 28 remain pending. In particular, Applicant has canceled claims 1 – 13, 27 and 29 without waiver, disclaimer or prejudice. Applicant has canceled claims 1 – 13, 27 and 29 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of these canceled claims in a continuing application, if Applicant so chooses, and does not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **Indication of Allowable Subject Matter**

The Office Action indicates that claims 14 – 26 and 28 allowed.

### **Rejections under 35 U.S.C. 102**

The Office Action indicates that claim 27 is rejected under 35 U.S.C 102 as being anticipated by *Konotchick*. As indicated above, Applicant has canceled claim 27 and respectfully asserts that the rejection has been rendered moot.

### **Comment on Statement of Reasons for Allowance**

The Examiner has made some broad conclusory statements in the section entitled “Allowable Subject Matter” that may be viewed as an oversimplification of the examination issues, and if taken out of context, could give rise to an improper interpretation of the claims as

well as the file history. For these reasons, Applicants provide the following comments to vouch the record and to ensure proper interpretation of the claims and history.

First, “a first metal layer aligned with the vibration chamber and a second metal layer aligned with the vibration chamber” is not recited in claim 28. However, the recited combination of other features recited in claim 28 is not taught or reasonably suggested by the references. Therefore, Applicants respectfully assert that claim 28 is in condition for allowance.

Second, although Applicants agree with other of the Examiner’s stated reasons for allowance, there may be additional reasons why the claims are allowable over the prior art of record. Applicants do not admit that the stated reasons for allowance are the only reasons for allowance.

Third, while the Applicants believe the pending claims are in condition for allowance, Applicants contend that the reasons for allowance, as suggested by the Examiner, should not be read into these claims.

Fourth, in accordance with 35 U.S.C. Section 282: “Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim.” Thus, the dependent claims that were not addressed by the Examiner in the reasons for allowance should not rise or fall, when construed in terms of validity, with their respective independent claims, but instead should be construed independently of their respective independent claims.

Fifth, the scope and validity of each claim (whether in independent, dependent, or multiple dependent form) should be determined based upon the entire combination of

elements/features/steps in each claim, as opposed to only the particular feature or features pointed out by the Examiner.

**Cited Art of Record**

The cited art of record has been considered, but is not believed to affect the patentability of the presently pending claims.

### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this Amendment and Response to Restriction Requirement. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,

By:



**Daniel R. McClure, Reg. No. 38,962**

**Thomas, Kayden, Horstemeyer & Risley, LLP**  
100 Galleria Pkwy, NW  
Suite 1750  
Atlanta, GA 30339  
770-933-9500